

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REUBEN AVENT,

Petitioner,

-against-

NEW YORK STATE DIVISION OF
PAROLE,

Respondent.

20-CV-6275 (LLS)

ORDER

LOUIS L. STANTON, Chief United States District Judge:

Reuben Avent filed a *pro se* action, opened under docket number 19-CV-1197 (LLS), asserting claims for damages against his parole officers and challenging his 2009 resentencing, which amended his 2001 Rockland County judgment of conviction to include a term of post-release supervision. By order dated August 4, 2020, the Court directed the Clerk of Court to sever the claims challenging Petitioner's resentencing, which sounded in *habeas*. The severed *habeas* claims were opened as a new action under this docket number, 20-CV-6275 (LLS).¹

A. Recharacterization as Habeas Petition

In the August 4, 2020 order, the Court directed the following:

If Petitioner wishes to pursue relief under § 2254, he may notify the Court in writing within thirty days that he wishes to do so. *See Castro v. United States*, 540 U.S. 375, 383 (2003); *Adams v. United States*, 155 F.3d 582, 584 (2d Cir. 1998) (per curiam); *Cook v. New York State Div. of Parole*, 321 F.3d 274, 282 (2d Cir. 2003). The Court will dismiss that action without prejudice if Plaintiff does not notify the Court in writing within 30 days of his intent to pursue a petition under § 2254.

Accordingly, if Petitioner wishes to pursue his claims for *habeas* relief, which are proceeding under this docket number, 20-CV-6275 (LLS), Petitioner should notify the Court in writing not later than September 4, 2020.

¹ The Court also severed claims arising outside this district and transferred them to the United States District Court for the Northern District of New York.

B. Filing Fee

To proceed with a petition for a writ of *habeas corpus* in this Court, a petitioner must either pay the \$5.00 filing fee or, to request authorization to proceed *in forma pauperis* (IFP), that is, without prepayment of fees, submit a signed IFP application. See 28 U.S.C. §§ 1914, 1915. Within thirty days of the date of this order, Petitioner must either pay the \$5.00 filing fee or complete and submit the attached IFP application. If Petitioner submits the IFP application, it should be labeled with docket number 20-CV-6275 (LLS). If the Court grants the IFP application, Petitioner will be permitted to proceed without prepayment of fees. See 28 U.S.C. § 1915(a)(1).

CONCLUSION

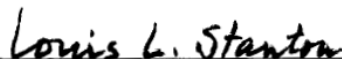
The Clerk of Court is directed to mail a copy of this order to Petitioner and note service on the docket. Petitioner must notify the Court in writing not later than September 4, 2020, if he wishes to pursue relief under § 2254. No answer shall be required at this time.

Within thirty days of the date of this order, Petitioner must either pay the \$5.00 filing fee or complete and submit the attached IFP application. If Petitioner submits the IFP application, it should be labeled with docket number 20-CV-6275 (LLS).

If Petitioner does not notify the Court that he wishes to proceed with this action, or does not pay the fee or submit an IFP application within the time allowed, this action will be dismissed without prejudice.

SO ORDERED.

Dated: August 10, 2020
New York, New York



Louis L. Stanton
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(Full name(s) of the plaintiff or petitioner applying (each person must submit a separate application))

-against-

____ CV _____ () ()

(Enter case number and initials of assigned judges, if available; if filing this with your complaint, you will not yet have a case number or assigned judges.)

(Full name(s) of the defendant(s)/respondent(s).)

APPLICATION TO PROCEED WITHOUT PREPAYING FEES OR COSTS

I am a plaintiff/petitioner in this case and declare that I am unable to pay the costs of these proceedings and I believe that I am entitled to the relief requested in this action. In support of this application to proceed *in forma pauperis* ("IFP") (without prepaying fees or costs), I declare that the responses below are true:

1. Are you incarcerated? ☐ Yes ☐ No (If "No," go to Question 2.)

I am being held at: _____

Do you receive any payment from this institution? ☐ Yes ☐ No

Monthly amount: _____

If I am a prisoner, *see* 28 U.S.C. § 1915(h), I have attached to this document a "Prisoner Authorization" directing the facility where I am incarcerated to deduct the filing fee from my account in installments and to send to the Court certified copies of my account statements for the past six months. *See* 28 U.S.C. § 1915(a)(2), (b). I understand that this means that I will be required to pay the full filing fee.

2. Are you presently employed? ☐ Yes ☐ No

If "yes," my employer's name and address are: _____

Gross monthly pay or wages: _____

If "no," what was your last date of employment? _____

Gross monthly wages at the time: _____

3. In addition to your income stated above (which you should not repeat here), have you or anyone else living at the same residence as you received more than \$200 in the past 12 months from any of the following sources? Check all that apply.

(a) Business, profession, or other self-employment	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(b) Rent payments, interest, or dividends	<input type="checkbox"/> Yes	<input type="checkbox"/> No

- | | | |
|---|------------------------------|-----------------------------|
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (d) Disability or worker's compensation payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (e) Gifts or inheritances | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (f) Any other public benefits (unemployment, social security, food stamps, veteran's, etc.) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (g) Any other sources | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

If you answered "No" to all of the questions above, explain how you are paying your expenses:

4. How much money do you have in cash or in a checking, savings, or inmate account?

5. Do you own any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value, including any item of value held in someone else's name? If so, describe the property and its approximate value:

6. Do you have any housing, transportation, utilities, or loan payments, or other regular monthly expenses? If so, describe and provide the amount of the monthly expense:

7. List all people who are dependent on you for support, your relationship with each person, and how much you contribute to their support (only provide initials for minors under 18):

8. Do you have any debts or financial obligations not described above? If so, describe the amounts owed and to whom they are payable:

Declaration: I declare under penalty of perjury that the above information is true. I understand that a false statement may result in a dismissal of my claims.

_____		_____	
Dated		Signature	
_____		_____	
Name (Last, First, MI)		Prison Identification # (if incarcerated)	
_____	_____	_____	_____
Address	City	State	Zip Code
_____		_____	
Telephone Number		E-mail Address (if available)	